

HB 2274-1
(LC 427)
2/6/23 (TSB/ps)

Requested by HOUSE COMMITTEE ON EMERGENCY MANAGEMENT, GENERAL GOVERNMENT, AND VETERANS (at the request of Department of Consumer and Business Services)

**PROPOSED AMENDMENTS TO
HOUSE BILL 2274**

1 On page 1 of the printed bill, line 2, after “provisions;” delete the rest
2 of the line and lines 3 through 7 and insert “amending ORS 59.245 and 59.995;
3 and prescribing an effective date.”.

4 Delete lines 9 through 31 and delete pages 2 through 50 and insert:

5 **“SECTION 1.** ORS 59.245 is amended to read:

6 “59.245. (1) The Director of the Department of Consumer and Business
7 Services **may:**

8 “[*(1)*] (a) [*May*] Make such public or private investigations within or
9 outside this state as the director deems necessary to determine whether a
10 person has violated or is about to violate any provision of the Oregon Se-
11 curities Law or any rule or order of the director, or to aid in the enforcement
12 of the Oregon Securities Law or in the formulation of rules and forms
13 thereunder;

14 **“(b) Make any proper inquiry of a person that is licensed or required**
15 **to be licensed as a broker-dealer, salesperson, investment adviser rep-**
16 **resentative or state investment adviser, or any officer, partner, direc-**
17 **tor or authorized representative of a broker-dealer, salesperson,**
18 **investment adviser representative or state investment adviser, in re-**
19 **lation to the activities or condition of the broker-dealer, salesperson,**
20 **investment adviser representative or state investment adviser or in**
21 **relation to any other matter connected with offering, purchasing or**

1 **selling any security or conducting a securities business;**

2 “[2] (c) [May] Require or permit a person to file a statement in writing,
3 under oath or otherwise as the director determines, as to all the facts and
4 circumstances concerning the matter to be investigated; **and**

5 “[3] (d) [May] Publish information concerning any violation of the
6 Oregon Securities Law or any rule or order of the director[;]. [and]

7 **“(2) A person shall promptly and truthfully reply to an inquiry from**
8 **the director in relation to any matter connected directly or indirectly**
9 **with an offer, purchase or sale of any security or the conduct of a**
10 **securities business. The person shall reply using the form of commu-**
11 **nication the director requests and an officer of the person shall verify**
12 **the reply if the director requests the verification. A person’s reply**
13 **under this subsection is subject to the provisions of ORS 59.135.**

14 “[4] (3) If the director has reason to believe that any person has en-
15 gaged, is engaging or is about to engage in any violation of the Oregon Se-
16 curities Law, **the director** may issue an order, subject to ORS 59.295,
17 directed to the person to cease and desist from the violation or threatened
18 violation.

19 **“(4) Except as provided in subsections (5) and (6) of this section, the**
20 **following records of the Department of Consumer and Business Ser-**
21 **vices are exempt from disclosure or production and the department**
22 **must treat the records as confidential in accordance with ORS 705.137:**

23 **“(a) A tip, complaint or referral the director receives against any**
24 **person that is subject to the director’s general supervision under ORS**
25 **59.235;**

26 **“(b) Examination reports and work papers, directives, orders and**
27 **correspondence that relates to examination reports; and**

28 **“(c) Investigation reports and any documents and information the**
29 **director gathers as part of an investigation under ORS 59.245.**

30 **“(5) The director may use in an action, suit or proceeding infor-**

1 **mation that is exempt from disclosure under subsection (4) of this**
2 **section if the director gathers the information in an examination or**
3 **investigation and the director considers the information necessary for**
4 **the purpose of investigating or prosecuting apparent violations of the**
5 **Oregon Securities Law or other law.**

6 **“(6) Notwithstanding ORS 40.270, an officer of the department may**
7 **be examined concerning records that are exempt from disclosure under**
8 **subsection (4) of this section and the records are subject to production**
9 **if a court finds that the examination and production are essential for**
10 **establishing a claim or defense in a civil or criminal action. In making**
11 **a finding under this subsection, a court shall view in camera the re-**
12 **ords the court requires to be produced.**

13 **SECTION 2. ORS 59.995 is amended to read:**

14 **“59.995. (1)(a) Except as provided in [paragraph] paragraphs (b) and (c)**
15 **of this subsection, in addition to all other penalties and enforcement pro-**
16 **visions provided by law, any person [who] that violates or [who] procures,**
17 **aids or abets the violation of this section and ORS 59.005 to 59.505, 59.710**
18 **to 59.830[,] and 59.991 [and 59.995] or any rule or order of the Director of the**
19 **Department of Consumer and Business Services [shall be] is subject to a**
20 **penalty of not more than \$20,000 for every violation, which [shall] must be**
21 **paid to the General Fund of the State Treasury.**

22 **“(b) [Notwithstanding paragraph (a) of this subsection,] Any person [who]**
23 **that violates or [who] procures, aids or abets the violation of ORS 59.485 or**
24 **of any rule [adopted by] the director adopts for administration of ORS 59.480**
25 **to 59.505 [shall be] is subject to a penalty of not more than \$1,000 for every**
26 **violation, which [shall] must be paid to the General Fund of the State**
27 **Treasury.**

28 **“(c) A person that violates or procures, aids or abets a violation of**
29 **this section or ORS 59.005 to 59.505, 59.710 to 59.830 and 59.991 or any**
30 **rule or order of the director and that knows or should have known**

1 **that the violation injures a vulnerable person, as defined in ORS**
2 **124.100, is in addition to all other penalties and enforcement provisions**
3 **provided by law subject to a penalty of not more than \$60,000 for each**
4 **violation, which must be paid to the General Fund of the State**
5 **Treasury.**

6 “(2) Every violation described in subsection (1)(a) **and (c)** of this section
7 is a separate offense and, in the case of a continuing violation, each day’s
8 continuance is a separate violation, but the maximum penalty for any con-
9 tinuing violation **under subsection (1)(a) of this section [shall] may not**
10 **exceed \$100,000 and the maximum penalty for a continuing violation**
11 **under subsection (1)(c) of this section may not exceed \$300,000.**

12 “(3) Civil penalties under this section shall be imposed as provided in
13 ORS 183.745.

14 “(4) **In addition to imposing a penalty provided under this section,**
15 **the director may order a person whose acts, omissions, practices, op-**
16 **erations or violation of ORS 59.005 to 59.505 and 59.710 to 59.830 injures**
17 **another person to pay restitution to the other person.**

18 “[4] (5) This section does not apply to:

19 “(a) A failure to file a notice and pay a fee pursuant to ORS 59.049 (1),
20 (2) or (3)[, *nor to*];

21 “(b) A failure to file a notice and pay a fee pursuant to ORS 59.165 (7)[,
22 *nor to*];

23 “(c) A failure to pay a fee pursuant to ORS 59.175 (9)[, *nor to*]; **or**

24 “(d) A violation of any rule adopted by the director under ORS 59.049 (1),
25 (2) or (3) or 59.165 (7).

26 “**SECTION 3. The amendments to ORS 59.245 and 59.995 by sections**
27 **1 and 2 of this 2023 Act apply to any business or transaction that is**
28 **subject to the Oregon Securities Law, to ORS 59.535 to 59.585 or to ORS**
29 **59.710 to 59.830, or any action or proceeding to enforce the provisions**
30 **of the Oregon Securities Law, ORS 59.535 to 59.585 or 59.710 to 59.830,**

1 that occurs on or after the operative date specified in section 4 of this
2 2023 Act.

3 **“SECTION 4. (1) The amendments to ORS 59.245 and 59.995 by**
4 **sections 1 and 2 of this 2023 Act become operative on January 1, 2024.**

5 **“(2) The Director of the Department of Consumer and Business**
6 **Services may adopt rules and take any other action before the opera-**
7 **tive date specified in subsection (1) of this section that is necessary**
8 **to enable the director, on and after the operative date specified in**
9 **subsection (1) of this section, to undertake and exercise all of the du-**
10 **ties, functions and powers conferred on the director by the amend-**
11 **ments to ORS 59.245 and 59.995 by sections 1 and 2 of this 2023 Act.**

12 **“SECTION 5. This 2023 Act takes effect on the 91st day after the**
13 **date on which the 2023 regular session of the Eighty-second Legislative**
14 **Assembly adjourns sine die.”**

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